

**Act for Promoting
Closed Substance Cycle Waste Management
and Ensuring Environmentally Compatible Waste Disposal
(*Kreislaufwirtschafts- und Abfallgesetz - KrW-/AbfG*)**

WASTE AVOIDANCE, RECOVERY AND DISPOSAL ACT*

of 27 September 1994,

as amended by the Act on the Expedition of Licensing Procedures (*Genehmigungsverfahrenbeschleunigungsgesetz*) of 12 September 1996 (Federal Law Gazette I p. 1354), the Act for the Conservation of the Soil (*Gesetz zum Schutz des Bodens*) of 17 March 1998 (Federal Law Gazette I p. 502), the Act on the Reform of Road Haulage Law (*Gesetz zur Reform des Güterkraftverkehrsrechts*) of 22 June 1998 (Federal Law Gazette I p. 1485) and the Act on the Implementation of the Protocol of 7 November 1996 to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter of 1972 (Federal Law Gazette I p. 2455)

*This Act implements Council Directive 91/156/EEC of 18 March 1991 for amendment of Directive 75/442/EEC on waste (EC Official Journal no. L 78 p. 32) and of Council Directive 94/31/EC of 27 June 1994 for amendment of Directive 91/689/EEC on hazardous waste (EC Official Journal no. L 168 p. 28).

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Part One
General Provisions

Article 1
Purpose of the Act

The purpose of this Act is to promote closed substance cycle waste management (Kreislaufwirtschaft) in order to conserve natural resources and to ensure environmentally compatible disposal of waste.

Article 2
Area of Application

(1) The provisions of this Act apply to

1. the avoidance,
2. recovery and
3. disposal of waste.

(2) The provisions of this Act shall not apply to

1. materials that are to be disposed of pursuant to the Animal Carcass Disposal Act (*Tierkörperbeseitigungsgesetz*) to the Meat-hygiene and Poultry-meat Hygiene Acts (*Fleischhygienegesetz, Geflügelfleischhygienegesetz*) to the Act on Foodstuffs and Commodities (Lebensmittel- and *Bedarfsgegenständegesetz*), to the Milk and Margarine Act (*Milch- and Margarinegesetz*), to the Epizootic Diseases Act (*Tierseuchengesetz*), to the Plant Protection Act (*Pflanzenschutzgesetz*) and pursuant to the statutory ordinances issued on the basis of these acts,
2. nuclear fuels and other radioactive substances within the meaning of the Atomic Energy Act,
3. substances whose disposal is regulated by a statutory ordinance issued on the basis of the Precautionary Radiological Protection Act (*Strahlenschutzvorsorgegesetz*),
4. waste occurring from prospecting, extraction, preparation, treatment and processing of mineral resources in facilities subject to mining inspection, except for waste not occurring directly and normally only in connection with the activities listed in the first half of this provision,
5. gaseous substances not in containers,

6. substances discharged or dumped into waters or the sewerage system,
7. search for, recovery, transport, storage, treatment and destruction of warfare agents.

Article 3

Definition of Terms

- (1) For the purposes of this Act, "waste" shall mean all movable property in the categories set out in Annex 1 which the holder discards, or intends or is required to discard. "Waste for recovery" is waste that is recovered; waste that is not recovered is "waste for disposal".
- (2) Discarding within the meaning of Para 1 occurs when the holder presents movable property for recovering within the meaning of Annex II B, or for disposal within the meaning of Annex II A, or when the holder gives up actual physical authority over the property and it no longer serves any purpose.
- (3) A desire to discard waste within the meaning of Para 1 must be assumed for any movable property
 1. occurring in connection with energy conversion, or with production, treatment or use of substances or products, or of services without such occurrence being the purpose of the relevant actions, or
 2. property whose original purpose no longer exists, or is given up, without being directly replaced by a new purpose.The producer's or holder's opinion shall be used as a basis for evaluating the purpose, taking into account the consensus on the market situation.
- (4) The holder must discard movable property within the meaning of Para 1 when such property is no longer used in keeping with its original purpose, and when, due to its specific state, it could endanger, either in the present or the future, the public interest, especially the environment; and when its potential danger can be ruled out only through proper and safe recovery, or disposal that is compatible with the public interest, pursuant to the provisions of this Act and to the statutory ordinances issued on the basis of this Act.
- (5) A producer of waste within the meaning of this Act shall be any natural person or legal entity through whose actions waste has occurred, or any person who has carried out pre-treatment, mixing or other treatment that effects a change in the nature or the composition of such waste.

- (6) A holder of waste within the meaning of this Act shall be any natural person or legal entity who has actual physical authority over waste.
- (7) Waste management comprises the recovery and disposal of waste.
- (8) Waste classified by a statutory ordinance pursuant to Article 41 Para 1 or Article 41 Para 3 No. 1 requires special supervision. All other waste requires supervision when it is to be disposed of; recoverable waste classified by a statutory ordinance pursuant to Article 41 Para 3 No. 2 also requires supervision.
- (9) For the purpose of transposing any legal acts of the European Communities into German law, the Federal Government is herewith authorised to incorporate new categories of waste, disposal operations or recovery operations into Annexes I, II A or II B, respectively, or to delete them from these Annexes or to alter them by means of statutory ordinances, with the consent of the *Bundesrat*.
- (10) "Landfills" within the meaning of this Act shall mean waste-disposal facilities for above-ground storage of waste (above-ground landfills) or for underground storage of waste (underground landfills). "Landfills" shall also include plants' own waste-storage facilities in which waste producers dispose of waste at the site of its production.
- (11) "Inert" waste shall mean mineral waste that is not subject to any significant physical, chemical or biological changes, that does not dissolve, does not burn and does not react, physically or chemically, in some other way, that does not degrade biologically and that does not affect other materials with which it comes into contact in a way that could lead to adverse impacts on the environment or on human health. The total leachability and pollutant content of the waste and the ecotoxicity of the leachate must be insignificant and, in particular, must not endanger the quality of surface waters or ground water. The Federal Government shall be authorised, after hearing the concerned parties (Article 60), and with the consent of the *Bundesrat*, to issue statutory ordinances that define inert waste.
- (12) The "state of the art" within the meaning of this Act shall mean that state of development of modern procedures, facilities or operational methods that, as a whole, reliably substantiates the practical suitability, for achieving a generally high standard of protection for the environment, of relevant measures for limiting emissions into the air, water and soil, for ensuring the safety of plants/facilities, for providing environmentally compatible waste management or, otherwise, for preventing or reducing impacts on the environment.

The criteria set forth in Annex III, in particular, shall be taken into account in defining the state of the art.

Part Two

Basic Principles for, and Obligations of, Producers and Holders of Waste and Parties Responsible for Waste Management

Article 4

Basic Principles of Closed Substance Cycle Waste Management (Kreislaufwirtschaft)

(1) Waste

1. must, firstly, be avoided; this must be accomplished especially by reducing its amount and noxiousness;
2. must, secondly,
 - a) be subjected to substance recycling or
 - b) used to obtain energy (energy recovery).

(2) Measures for waste avoidance shall include, especially, closed-cycle management of substances within plants, low-waste product design and consumer behaviour oriented to the acquisition of low-waste and low-pollution products.

(3) Substance recycling shall mean substitution of raw materials through the extraction of substances from waste (secondary raw materials), or use of the substance properties within waste for their original purpose, or for other purposes, except for direct energy recovery. Substance recycling shall be considered to occur when, in keeping with an economic perspective, and taking into account the impurities present in the relevant waste, the main purpose of the relevant measure is to use the waste, and not to eliminate its pollution potential.

(4) Energy recovery shall mean the use of waste as a substitute fuel; the priority for energy recovery does not affect thermal treatment of waste for disposal, especially household waste. The main purpose of a measure in question shall be taken as the criterion for differentiation. For a given waste sample that has not been mixed with other substances, the type and extent of the waste's impurities, and the additional waste and emissions occurring as a result of its treatment, shall be the criterion for determining whether the relevant waste management measure's main purpose is energy recovery or treatment.

- (5) Closed substance cycle waste management shall also comprise provision, supply, collection, collection by collect and bring systems, transport, storage and treatment of waste for recovery.

Article 5

Basic Obligations in Closed Substance Cycle Waste Management

- (1) Obligations to avoid waste production are in accordance with Article 9 and the statutory ordinances issued on the basis of Articles 23 and 24.
- (2) Producers and holders of waste shall be obligated to recover the waste in question pursuant to Article 6. Where this Act entails no opposing factor, waste recovery has priority over waste disposal. High-quality recovery appropriate for the type and the nature of the waste in question shall be pursued. To the extent required to observe provisions contained in Articles 4 and 5, waste for recovery shall be kept and treated separately.
- (3) Waste recovery, especially binding of waste within products, must take place properly and safely. Recovery takes place properly when it complies with the provisions of this Act and with other public-law provisions. It takes place safely when, given the waste's nature, the extent of the impurities the waste contains and the type of recovery in question, no impairment of the public interest is expected, and, in particular, when no accumulation of harmful substances occurs within the recovered substance cycle.
- (4) The obligation to recover waste is to be met, to the extent this is technically possible and economically reasonable, especially when a market exists, or can be created, for an extracted substance or for extracted energy. Waste recovery is technically possible even when it requires pre-treatment. Waste recovery is economically reasonable if the costs it entails are not disproportionate in comparison with the costs waste disposal would entail.
- (5) The priority set forth in Para 2 for waste recovery shall not exist in cases in which waste disposal is the more environmentally compatible solution. In this connection, the following must especially be taken into account:
1. the expected emissions,
 2. the aim of conserving natural resources,
 3. the energy to be consumed or yielded, and
 4. the resulting increased accumulation of harmful substances in products, in waste for

recovery or in products made from such waste.

- (6) The priority for waste recovery shall not apply to waste occurring directly and normally through research and development.

Article 6

Substance Recycling and Energy Recovery

(1) Waste can be

- a) subjected to substance recycling or
- b) used to obtain energy.

Priority shall be given to that form of recovery which is more environmentally compatible. Article 5 Para 4 shall apply mutatis mutandis. The Federal Government is herewith authorised, after hearing the parties concerned (Article 60), to issue statutory ordinances giving priority to substance recycling or to energy recovery for certain waste types; this shall occur with the consent of the Bundesrat, on the basis of criteria set forth in Article 5 Para 5 of the present Act, and taking into account the requirements listed in Para 2.

(2) If priority for a type of use is not set forth by a statutory ordinance pursuant to Para 1 above, energy recovery within the meaning of Article 4 Para 4 is permissible only when

1. the thermal value of the waste in question, without the waste's being mixed with other substances, is at least 11,000 kj/kg,
2. a combustion efficiency of at least 75 % is achieved,
3. the resulting heat is either used by the person/entity recovering the energy or supplied to a third party, and
4. further wastes produced during the recovery process can be landfilled if possible without further treatment.

Waste from renewable raw materials can be used for energy recovery if the prerequisites listed in Sentence 1 Nos. 2 through 4 are met.

Article 7

Requirements of Closed Substance Cycle Waste Management

(1) The Federal Government is herewith authorised, after hearing the parties concerned (Article 60), to issue statutory ordinances, with the consent of the Bundesrat, and to the extent

required to fulfil obligations pursuant to Article 5, especially those ensuring safe recovery that accomplish the following:

1. place restrictions on certain wastes being bound in or remaining in products specified by type, nature and constituents,
2. mandate requirements of separation, transport and storage of waste,
3. mandate requirements of waste provision, supply, gathering and collection by collect and bring systems,
4. mandate the following for certain waste, recovery of which, due to the type, nature or amount of the waste in question, is particularly able to impair the public interest, especially the natural resources requiring protection that are listed in Article 10 Para 4, by area of origin, place where they occur or initial product:
 - a) that such waste may be put into circulation, or recovered only in certain amounts or types, or only for certain purposes,
 - b) that these wastes, when of a specified nature, may not be put into circulation.
5. mandate that relevant waste holders are obligated, when they supply waste to third parties, to notify such parties concerning the requirements resulting from these statutory ordinances,
6. Mandate labelling obligations with regard to waste.

(2) Requirements to be fulfilled by substances can be mandated, by means of a statutory ordinance pursuant to Para 1, when power-plant waste, plaster from flue-gas desulphurisation facilities or other waste is used, by companies subject to supervision by mining supervisory authorities, for technical or safety reasons or for restoring usability of facilities.

(3) Specifications by means of statutory ordinances pursuant to Para 1, may be laid down on procedures for the review of the mandatory requirements in Para 1, especially as referring to

1. the taking of samples, the whereabouts of reserved samples, including safe-keeping, and the procedures to be used for such actions,
2. the analysis procedures required for identification of individual substances or substance groups.

As to the requirements pursuant to Sentence 1, reference may be made to publicly accessible official notifications of the pertinent expert bodies. In this case

1. the statutory ordinance shall give the date of the official notification and accurate source data,
2. the official notification must be filed in the archives of the German Patent Office for safe custody and a reference made to this fact in the statutory ordinance.

Article 8
Requirements of Closed Substance Cycle Waste Management
in the Area of Agricultural Fertilisation

- (1) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety is herewith authorised to mandate, by statutory ordinance, in agreement with the Federal Ministry of Consumer Protection, Food and Agriculture (BMVEL), with the consent of the Bundesrat and after hearing the parties concerned (Article 60), requirements for the area of agriculture for ensuring proper and safe recovery pursuant to Para 2.
- (2) If waste for recovery, as secondary raw-material fertiliser or farm fertiliser, is applied, within the meaning of Article 1 of the Fertiliser Act, on land used for agricultural, silvicultural or horticultural purposes, then the following, in particular, can be mandated, in statutory ordinances pursuant to Para 1, for such supply and application, with regard to the relevant pollutants:
1. Prohibitions or restrictions depending on factors such as type and nature of the pertinent soil, application site and time and natural site conditions, and
 2. Studies of the relevant waste, farm fertiliser or soil, measures for pre-treatment of these substances, or suitable other measures.
- This applies to farm fertiliser to the extent that the usual quantities employed in good and proper practice, within the meaning of Article 1 a of the Fertiliser Act, are exceeded.
- (3) The Land Governments may issue statutory ordinances pursuant to Para 2, if the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety makes no use of the relevant authorisation; in addition, they can transfer the relevant authorisation, by statutory ordinance, and completely or in part, to other authorities.

Article 9
Obligations of Operators of Plants

The obligations of operators of plants that either require authorisation or do not require authorisation, pursuant to the Federal Immission Control Act, to construct and operate such plants in such a manner that waste is avoided, recovered or disposed of, follow from the provisions of the Federal Immission Control Act. Substance-oriented requirements concerning the type and manner of

the relevant recovery and disposal of waste, pursuant to this Act, are not affected. Substance-oriented requirements for internal recovery within plants shall be mandated by statutory ordinance pursuant to Article 6 Para 1 and Article 7.

Article 10
Basic Principles of Waste Disposal
that is Compatible with the Public Interest

- (1) Waste that is not recovered shall be permanently excluded from closed substance cycle waste management, and it shall be disposed of permanently in a manner in keeping with the public interest.
- (2) Waste disposal shall comprise the provision, supply, collection, transport, treatment, storage and landfilling of waste for disposal. The amount and noxiousness of waste shall be reduced through waste treatment. Any energy or waste occurring in connection with treatment and landfilling shall be exploited to the maximum extent possible. Treatment and landfilling are to be considered waste disposal if the energy or waste occurring in connection with such treatment and storage can be exploited, but such exploitation is only a secondary purpose of the disposal.
- (3) Waste shall be disposed of within the country. The provisions of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ EC No. L 30 p. 1) and of the Act of 30 September 1994 implementing the Basle Convention of 22 March 1989 on the Control of the Transboundary Movement of Hazardous Wastes and their Disposal (Federal Law Gazette I, p. 2771), shall not be affected.
- (4) Waste shall be disposed of in such a manner that the public interest is not impaired. Impairment occurs when, in particular,
 1. human health is impaired,
 2. animals and plants are endangered,
 3. water bodies and soil are harmfully influenced,
 4. harmful influences on the environment are caused by air pollution or noise,
 5. the interests of town and country planning, of nature conservation and landscape management and of urban development are not considered adequately or
 6. the public's safety and the public order are otherwise threatened or disturbed.

Article 11
Basic Obligations of Waste Disposal

- (1) Producers or holders of waste that is not recovered are obligated to dispose of such waste in keeping with basic principles of waste management that is compatible with the public interest, pursuant to Article 10, to the extent that Articles 13 through 18 contain no different provisions.
- (2) To the extent necessary to fulfil requirements pursuant to Article 10, waste for disposal shall be stored and treated separately from other waste.

Article 12
Requirements of Waste Disposal

- (1) The Federal Government is herewith authorised, after hearing the parties concerned (Article 60), to mandate, by statutory ordinance, and with the consent of the Bundesrat, requirements, in keeping with the technological state of the art, for fulfilling obligations pursuant to Article 11 for the disposal of waste; these requirements may specify area of origin, site of occurrence, as well as the type, amount and nature of the relevant waste. Such requirements may include especially
 1. requirements for separate storage and treatment of waste,
 2. requirements for provision, supply, collection, transport, storage and landfilling of waste and
 3. procedures for review of requirements pursuant to Article 7 Para 3.
- (2) To execute this Act and the Federal statutory ordinances issued on the basis of this Act, the Federal Government, after hearing the parties concerned (Article 60), and with the consent of the Bundesrat, shall issue general administrative regulations concerning requirements for environmentally compatible waste disposal in keeping with the state of the art. This shall include mandating procedures for collection, treatment, storage and landfilling that, as a rule, ensure environmentally compatible waste disposal.

Article 13

Obligation to Make Waste Available to Parties Responsible for Waste Disposal

- (1) Contrary to Article 5 Para 2 and Article 11 Para 1, producers or holders of waste from private households are obligated to make such waste available to the legal entities who are obligated, pursuant to Land laws, to carry out waste management (public-law parties responsible for waste management), to the extent that such producers or holders are unable, or do not intend, to carry out recovery themselves. Sentence 1 also applies to producers and holders of waste for disposal from other areas of origin, to the extent that they do not dispose of such waste in their own facilities, or that predominating public interests require such waste to be made available.
- (2) The obligation to make waste available to public-law parties responsible for waste disposal does not exist if obligations for recovery and disposal, pursuant to Article 16, 17 or 18, have been transferred to third parties or private parties responsible for waste management.
- (3) The obligation to make waste available does not exist for waste
 1. subject to obligations, based on a statutory ordinance pursuant to Article 24, to return waste, or to accept returned waste, in cases in which public-law parties responsible for waste management are not involved in acceptance of returned waste on the basis of a provision pursuant to Article 24 Para 2 No. 4,
 2. that is subjected, through non-profit collection, to proper and safe recovery,
 3. that is subjected, through commercial collection, to proper and safe recovery, to the extent such subjection is demonstrated to public-law parties responsible for waste management, and does not conflict with any predominating public interests.Nos. 2 and 3 do not apply to waste requiring special supervision. Special provisions contained in statutory ordinances pursuant to Articles 7 and 24, regarding the obligation to make waste available, are not affected.
- (4) To ensure environmentally compatible disposal, the Länder can mandate obligations to offer waste (Andienung) and to make waste available in connection with waste for disposal requiring special supervision. To ensure environmentally compatible waste management, they can mandate obligations to offer waste and to make waste available in connection with waste for recovery requiring special supervision, in cases where proper recovery cannot be assured by other means. The waste for recovery mentioned in Sentence 2 is defined by the Federal Government, by statutory ordinance, with the consent of the Bundesrat. Obligations to offer waste mandated by the Länder prior to the coming into

force of this Act, in connection with waste for recovery requiring special supervision, are not affected. Where waste management obligations pursuant to Article 16,17 or 18 have been transferred to third parties or private parties responsible for waste management, such third parties or private parties are not subject to such obligations to offer waste or to make waste available.

Article 14

Toleration Obligations in Connection with Premises

- (1) The titleholders and owners of land on which waste is produced that is subject to obligations to make waste available are obligated to tolerate the installation of containers required for waste collection, as well entry on to the premises for the purposes of collection and for supervision of waste separation and recovery.
- (2) Para 1 shall apply accordingly for return and collection systems required to fulfil obligations to accept returned goods on the basis of a statutory ordinance pursuant to Article 24.

Article 15

Obligations of Public-Law Parties Responsible for Waste Management

- (1) The public-law parties responsible for waste management shall recover, in keeping with Articles 4 through 7, or dispose of, in keeping with Articles 10 through 12, waste from private households in their area that has occurred and has been made available to them, as well as waste for disposal from other areas of origin. If waste is made available to them for disposal for reasons listed in Article 5 Para 4, the public-law parties responsible for waste management are required to carry out recovery, to the extent that these reasons do not apply to them.
- (2) The public-law parties responsible for waste management shall be exempted from obligations to manage waste from areas of origin other than private households, to the extent that waste management obligations have been transferred, pursuant to Article 16, 17 or 18, to third parties or private parties responsible for waste management.
- (3) The public-law parties responsible for waste management can, with the consent of the competent authority, exclude waste from waste management to the extent that the waste

in question is subject to obligations to accept returned goods, on the basis of a statutory ordinance issued pursuant to Article 24, and that appropriate facilities for accepting returned goods are actually available. Sentence 1 also applies to waste for disposal from areas of origin other than private households, to the extent that the waste in question, due to its type, amount or nature, cannot be disposed of together with the household waste; or that safe, environmentally compatible disposal, in harmony with the waste management plans of the Länder, is ensured by another party responsible for waste management or by another third party. The public-law parties responsible for waste management can revoke the exclusion from waste management pursuant to Sentences 1 and 2, with the consent of the competent authority, if the prerequisites for exclusion as listed in those sentences are no longer fulfilled.

- (4) The obligations pursuant to Para 1 shall also apply to motor vehicles or trailers without valid official registration, when they are parked on public areas or outside of contiguously built-up municipal areas, when there are no indications that they have been stolen, or that they are being used as intended, and when they have not been removed within one month after a plainly visible relevant request has been attached to them.

Article 16

Commissioning of Third Parties

- (1) Parties responsible for waste recovery and disposal can commission third parties to fulfil their obligations. Such commissioning does not affect their responsibility for fulfilment of the relevant obligations. The so-commissioned third parties must provide the necessary reliability.
- (2) By application, and with the consent of the parties responsible for waste management within the meaning of Articles 15, 17 and 18, the competent authority can transfer the obligations of these parties to a third party, completely or in part, if
1. the third party in question has the necessary knowledge and capability and is reliable,
 2. fulfilment of the transferred obligations is ensured and
 3. no predominating public interests conflict with this procedure.
- Transfer of obligations of the private parties responsible for waste management to third parties requires the consent of the public-law parties responsible for waste management within the meaning of Article 15.
- (3) To demonstrate fulfilment of the prerequisites pursuant to Para 2, the third party must present, in particular, a waste management concept. The waste management concept must contain the following:
1. details concerning the type, amount and whereabouts of the waste to be recovered or disposed of,
 2. description of the measures that have been taken and planned for waste recovery or for disposal,
 3. explanation of the planned waste management measures for the next five years, including information about the necessary site and facility planning and its chronological sequence,
 4. separate description of the waste listed under No. 1, for recovery or disposal outside of the Federal Republic of Germany.
- Preparation of the waste management concept must take into account requirements of waste management planning pursuant to Article 29. The waste management concept must be prepared and updated in keeping with Article 19 Para 3. In addition, one year after transfer of the obligations, a waste balance sheet must be prepared and presented, in keeping with Article 20 Para 1.
- (4) The transfer shall be for a limited term. It can include secondary provisions; in particular, it can be issued conditionally and coupled to restrictions or a reserved right of revocation.

Article 17

Performance of Tasks by Associations

- (1) Producers and holders of waste from commercial enterprises and other types of industrial companies or public institutions may form associations that can be commissioned by producers or holders of waste to fulfil their responsibilities to recover and dispose of waste. Article 16 Para 1 Sentences 2 and 3 applies accordingly.
- (2) The public-law parties responsible for waste management, and self-administrative commercial bodies may support formation of such associations and participate in them.
- (3) The competent authority, with the consent of the public-law parties responsible for waste management within the meaning of Article 15, can transfer to such associations, at their application, and completely or in part, the obligations of producers and holders of waste. This can occur if
 1. the purpose of the relevant association cannot be fulfilled by other means,
 2. fulfilment of the transferred obligations is ensured, especially the safety of waste disposal for the transferred task area, in harmony with the waste management plans of the Länder (Article 29), and
 3. no predominating public interests conflict with this procedure.Article 16 Para 3 and 4 applies mutatis mutandis.
- (4) The competent authority can commission the association, within the framework of the transferred task area and of the association's purpose, to manage all waste in a designated area, especially waste for disposal of other producers and holders, to the extent that
 1. this is necessary to protect the public interest and
 2. the producers and holders do not fulfil their obligations themselves.
- (5) The associations may levy fees. The fee schedule must be authorised by the competent authority.
- (6) Article 15 Para 1 and 3 shall apply accordingly to the transferred recovery and disposal obligations. To the extent required to fulfil the transferred obligations, obligations to make waste available and toleration obligations shall exist toward the associations; Article 13 Para 1 and 3 and Article 14 shall apply accordingly. To fulfil the transferred obligations, the associations can require the waste producers and holders to keep waste separated and to bring it to certain collection sites or treatment facilities. The authority of producers and

holders to manage waste themselves shall not be affected by these provisions.

Article 18

Performance of Tasks by Self-Administrative Commercial Bodies

- (1) Chambers of commerce, chambers of trade and chambers of agriculture (self-administrative commercial bodies) may form institutions that can be commissioned, by producers and holders of waste, with the fulfilment of their recovery and disposal obligations. Article 16 Para 1 Sentences 2 and 3 shall apply mutatis mutandis.
- (2) At the application of the self-administrative commercial bodies, the competent authority may transfer, completely or in part, obligations of waste producers and holders to the institutions in a designated area. Article 17 Para 3 through 6 applies mutatis mutandis.

Article 19

Waste Management Concepts

- (1) Waste producers who annually produce more than a total of 2,000 kilograms of waste requiring special supervision, or more than 2,000 tonnes of waste requiring supervision, per waste category, shall prepare a waste management concept for the avoidance, recovery and disposal of the produced waste. The waste management concept serves as an internal planning instrument and must be submitted, upon request, to the competent authority for evaluation in connection with waste management planning. The waste management concept shall contain the following:
 1. Details concerning the type, amount and whereabouts of waste requiring special supervision, of waste for recovery requiring supervision, and of waste for disposal,
 2. Description of measures, taken and planned, for avoidance, recovery and disposal of waste,
 3. Justification of the necessity of waste disposal, especially including details concerning lacking possibilities for recovery for reasons listed in Article 5 Para 4,
 4. Description of the planned waste management measures for the next five years; waste producers who carry out waste management themselves must also include information about the necessary site and facility planning and its chronological sequence,
 5. Separate description of the whereabouts of waste listed under No. 1, for recovery or disposal outside of the Federal Republic of Germany.

- (2) Preparation of the waste management concept must take account of requirements of waste management planning pursuant to Article 29.
- (3) The waste management concept shall be prepared, for the first time, by 31 December 1999 and shall cover the subsequent five years. It shall be updated every year, to the extent that the Länder have made no different provisions by the time this Act comes into force. The competent authority can require submission of the waste management concept by an earlier date.
- (4) The Federal Government shall mandate, by statutory ordinance and with the consent of the Bundesrat, and after hearing the parties concerned (Article 60),
1. further requirements concerning the form and content of the documents to be submitted pursuant to Para 1,
 2. exceptions, for certain waste types, to the obligations listed in Paras 1 through 3,
 3. individual types of waste for recovery, not requiring special supervision, that are to be included in the waste management concept.
- (5) The public-law parties responsible for waste management within the meaning of Article 15 shall prepare waste management concepts concerning the recovery and disposal of waste that is produced in their area and that must be made available to them. Requirements for these waste management concepts shall be specified by the Länder.

Article 20

Waste Balance Sheet

- (1) Parties obligated within the meaning of Article 19 Para 1 shall prepare annual analyses of the type, amount and whereabouts of waste requiring special supervision, and of waste requiring supervision, that has been recovered or disposed of during the past year (waste balance sheet). Such analyses shall be prepared for the first time by 1 April 1998. Upon request, such parties shall submit such analyses to the competent authority. Article 19 Para 1 Sentence 3 Nos. 1, 3, 5; Para 3 Sentence 1, 2nd part and Para 4 shall apply mutatis mutandis.
- (2) Holders of waste from commercial companies or other business enterprises, or from public institutions, are obligated to provide information to the obligated parties within the meaning of Para 1 Sentence 1, to the extent that such holders are required to make waste

available to them.

- (3) The public-law parties responsible for waste management within the meaning of Article 15 shall prepare waste balance sheets in accordance with Para 1. The requirements to be fulfilled by the waste balance sheets are specified by the Länder.

Article 21

Orders in Individual Cases

- (1) In individual cases, the competent authority may issue the necessary orders for the implementation of this Act and of the statutory ordinances issued on the basis of this Act.
- (2) The competent authority may issue orders for parties obligated within the meaning of Article 19 Para 1 to commission an expert named by the highest competent Land authority or the competent authority in accordance with Land law with the review of waste management concepts and waste balance sheets pursuant to Articles 19 and 20.
- (3) If waste management concepts or waste balance sheets are not prepared, are not prepared as required or are not prepared on time, the competent authority can issue objections and grant the relevant obligated party a suitable period for improvement.

Part Three

Product Responsibility

Article 22

Product Responsibility

- (1) Parties who develop, manufacture, process and treat, or sell products have "product responsibility" for achievement of the aims of closed substance cycle waste management. In order to fulfil product responsibility, products must be so designed, if at all possible, that waste production is reduced within their production and use, and that environmentally compatible recovery and disposal of the waste resulting from their use is ensured.
- (2) In particular, product responsibility comprises
1. the development, production and marketing of products that can be re-used, that are

technically durable and that are suitable, after use, for proper and safe recovery and environmentally compatible disposal,

2. priority for use of recoverable waste or secondary raw materials in the production of products,
3. labelling of products containing pollutants, in order to ensure environmentally compatible recovery or disposal of the waste remaining after their use,
4. provision of information concerning possibilities or obligations for return, re-use and recovery, and concerning deposit-payment arrangements, through product labelling and
5. acceptance of returned goods and of the waste remaining after their use, as well as the subsequent recovery or disposal of such products and waste.

(3) As part of product responsibility pursuant to Paras 1 and 2, the following must be taken into account, in addition to proportionality of requirements pursuant to Article 5 Para 4: provisions resulting from other requirements concerning product responsibility and protection of the environment, and provisions of Community law concerning the free movement of goods.

(4) The Federal Government determines, by statutory ordinances on the basis of Articles 23 and 24, which obligated parties must fulfil product responsibility pursuant to Paras 1 and 2. It also determines the products for which, and by what means and manner, product responsibility must be fulfilled.

Article 23

Prohibitions, Restrictions and Labelling

For definition of requirements pursuant to Article 22, the Federal Government is authorised, after hearing the parties concerned (Article 60), to mandate, by statutory ordinance and with the consent of the Bundesrat, that

1. certain products, especially packaging and containers with only certain characteristics or for certain uses, for which proper recovery or disposal of produced waste is ensured, may be put into circulation,
2. certain products may not be put into circulation at all if, during management of their waste, the release of noxious substances cannot be avoided, or can be avoided only at disproportionately high expenditure, or if environmentally compatible management cannot be ensured by other means,
3. certain products shall be put into circulation only in a certain form that clearly facilitates waste

- management, especially in a form that permits re-use or that facilitates recovery,
4. certain products shall be marked/labelled in a specified manner, especially in order to assure fulfilment of basic obligations for acceptance of returned goods pursuant to Article 5 (labelling obligation),
 5. certain products, due to the content of a noxious substance in the waste expected to remain after their intended use, shall be put into circulation only if they are provided with marking/labelling which points out, in particular, the necessity of return to the manufacturer, distributor or specified third parties, in order to ensure the necessary special recovery or disposal,
 6. for certain products, for which obligations to accept returned goods, or to return goods, pursuant to Article 24, have been mandated, that the site of sale or putting into circulation must call attention to the possibility of returning the goods, or that the products must be appropriately labelled,
 7. certain products, for which levying of a deposit pursuant to Article 24 has been mandated, must be appropriately labelled; if necessary, such labelling must include mention of the amount of the deposit.

Article 24

Obligation to Return Certain Goods and Obligation to Accept Returned Goods

- (1) For definition of requirements pursuant to Article 22, the Federal Government is authorised, after hearing the parties concerned (Article 60), to mandate, by statutory ordinance and with the consent of the Bundesrat, that manufacturers or distributors
 1. may sell or put into circulation certain products only after providing a possibility for returning the pertinent goods,
 2. shall accept certain products when returned and shall provide for return, by suitable measures, especially by means of systems for accepting returned goods, or by levying a deposit,
 3. must accept certain products at the place where they are sold or where they occur,
 4. shall keep records, to be presented to the Land, competent authority or party responsible for management within the meaning of Articles 15, 17 or 18, concerning the type, amount, recovery and disposal of returned waste, and shall retain and keep relevant documents, to be presented upon request.

- (2) For definition of requirements pursuant to Article 22 and for supplementary definition of obligations of producers and holders of waste, and of the parties responsible for waste

management within the meaning of Articles 15, 17 and 18, and within the framework of closed substance cycle waste management, the following may also be mandated in a statutory ordinance pursuant to Para 1:

1. which party is responsible for paying the costs for acceptance, recovery and disposal of products that must be accepted when returned,
2. that holders of waste must make waste available to manufacturers or distributors obligated pursuant to Para 1,
3. the means and manner by which waste shall be made available, including measures within the meaning of Article 4 Para 5 for provision, collection and transport, and including waste-bringing obligations of the owners named under No. 1,
4. that the parties responsible for waste management within the meaning of Articles 15, 17 and 18 shall co-operate in accepting returned goods, as a task entrusted to them, by collecting waste and making it available to parties obligated pursuant to Para 1.

Article 25

Voluntary Acceptance of Returned Goods

- (1) The Federal Government may define aims for the voluntary acceptance of returned waste, after hearing the parties concerned (Article 60), that are to be attained within an appropriate period. It shall publish such defined aims in the Federal Gazette.
- (2) Manufacturers and distributors who voluntarily accept returned waste for disposal, or waste for recovery requiring supervision or waste for recovery requiring special supervision, must notify the competent authority of such acceptance. The competent authority for receiving such notification should grant exemptions from obligations pursuant to Article 49, and from proof obligations pursuant to Articles 43 and 46, to the extent that the voluntary acceptance of returned waste promotes the aims of closed substance cycle waste management pursuant to Articles 4 and 5 and other suitable proof is furnished that the accepted waste is properly recovered and disposed of.

Article 26

Obligations of Holders after Acceptance of Returned Goods

Manufacturers and distributors who accept returned waste on the basis of a statutory ordinance pursuant to Article 24, or who voluntarily accept returned waste, shall be subject to the obligations

of waste holders pursuant to Articles 5 and 11.

Part Four
Planning Responsibility

Section One
Regulation and Planning

Article 27
Regulation of Waste Disposal

- (1) For purposes of disposal, waste may be treated, stored or landfilled only in authorised plants or facilities (waste disposal facilities). In addition, treatment of waste for disposal shall be permitted in facilities that primarily serve a purpose other than waste disposal and that require a licence pursuant to Article 4 of the Federal Immission Control Act. Storage or treatment of waste for disposal in waste disposal facilities for these purposes shall also be permitted to the extent that such facilities, as insignificant facilities pursuant to the Federal Immission Control Act, do not require a licence, and no other provisions are made in statutory ordinances pursuant to Article 12 Para 1 or pursuant to Article 23 of the Federal Immission Control Act or in general administrative regulations pursuant to Article 12 Para 2.
- (2) In individual cases, the competent authority may permit exceptions to Para 1 Sentence 1, while reserving a right of revocation, if such action does not impair the public interest.
- (3) The Land governments may permit, through statutory ordinance, disposal of certain waste, or of certain amounts of such waste, outside of facilities within the meaning of Para 1 Sentence 1, to the extent that there is a need for such disposal and that it is not expected to impair the public interest. In such cases, the Land governments may also determine the prerequisites for such disposal, and the type and means of such disposal, by statutory ordinance. The Land governments may transfer, by statutory ordinance and completely or in part, such powers to other authorities.

Article 28

Execution of Disposal

- (1) The competent authority may require the operator of a waste disposal facility to permit a party obligated to carry out disposal pursuant to Article 11, and parties responsible for waste management within the meaning of Articles 15, 17 and 18, to use the relevant waste disposal facility, for an appropriate fee, to the extent that such a party or parties cannot efficiently dispose of the waste by other means, or can dispose of it only at a considerable additional cost, and that such use does not place an unreasonable burden on the operator. If agreement cannot be reached concerning the amount of the relevant fee, it shall be determined by the competent authority. Such assignment may take place only when it does not conflict with provisions of this Act; fulfilment of basic obligations pursuant to Article 11 must be ensured. The competent authority shall require the party receiving such assignment to submit waste management concepts and shall use these concepts as the basis for its decision. By application of the party obligated pursuant to Sentence 1, the party receiving the assignment can be obligated to accept waste of the same type, and in the same amount, after lapse of the reasons for the assignment.

- (2) The competent authority may transfer, to the operator of a waste disposal facility who is able to dispose of waste more economically than the parties responsible for waste management within the meaning of Articles 15, 17 and 18, on the application of such an operator, responsibility for disposal of the relevant waste. Such transfer can be coupled to the requirement that the applicant dispose of all waste occurring in the area for which the parties responsible for waste management are responsible, for reimbursement of costs, if the parties responsible for waste management cannot dispose of the remaining waste, or can dispose of it only at a disproportionately high expenditure; this does not apply if the applicant shows that assumption of responsibility for disposal would represent an unreasonable burden.

- (3) The party holding mining rights for, or the entrepreneur of, a mineral mining operation, as well as the titleholder or owner of land used for mineral mining, or party otherwise authorised to dispose over such land, can be obligated by the competent authority to tolerate disposal of waste in exposed tunnels in his facility, or on his land, to permit access and, to the extent that this is required, to make available existing facility equipment or facilities, or portions thereof. The party responsible for the disposal must reimburse the relevant party for incurred costs resulting from such use. The competent authority shall determine the

content of this obligation. The priority of mineral extraction over waste disposal shall not be affected. The party required to tolerate such use shall not be liable for damage resulting from the waste disposal.

- (4) Dumping of waste for disposal on the high seas and incineration of wastes on the high seas shall be prohibited in accordance with the Act on the Prohibition of Dumping of Wastes and Other Matter of Objects on the High Seas of 25 August 1998 (Federal Law Gazette I p. 2455). Dumping of dredged material on the high seas shall be permitted subject to the provision of the Act referred to in Sentence 1, depending on the material's constituents.

Article 29

Waste Management Planning

- (1) The Länder shall prepare waste management plans, for their respective areas, in keeping with supraregional perspectives. The waste management plans shall include descriptions of the following:

1. the aims of waste avoidance and recovery and
2. the waste disposal facilities required to ensure waste disposal within the national borders.

The waste management plans shall list the following:

1. authorised waste disposal facilities and
2. suitable areas for waste disposal facilities for final landfilling of waste (landfills) and for other waste disposal facilities.

The plans can also mandate which parties responsible for waste management are to be chosen and which waste disposal facility the parties responsible for disposal must use.

- (2) Description of demand must take into account future developments expected within a period of at least ten years. To the extent this is necessary for description of demand, waste management concepts and waste balance sheets must be evaluated.

- (3) An area may be considered suitable within the meaning of Para 1 Sentence 3 No. 2 if its location, size and nature, with regard to the planned use, does not conflict with the waste management aims within the plan area, and if it does not clearly conflict with the public interest. Site determination pursuant to Para 1 shall not a prerequisite for plan approval or for licensing of the waste disposal facilities listed in Article 31.

- (4) Assignments within the meaning of Para 1 Sentence 3 No. 2 and Sentence 4 can be declared

binding for the party obligated to carry out disposal.

- (5) Waste management planning must take into account the aims, principles and other requirements of town and country planning. Article 7 Para 3 Sentence 1 and Sentence 2 No. 3 of the Regional Development Act (*Raumordnungsgesetz*) shall not be affected.
- (6) The Länder should co-ordinate their waste management planning to and with each other. If planning is required that extends beyond a Land boundary, the affected Länder, in preparing waste management plans, should reach mutual agreement concerning requirements and measures.
- (7) Communities, or amalgamations of communities, and the parties responsible for waste management within the meaning of Articles 15, 17 and 18, shall be involved in preparation of waste management plans.
- (8) The Länder shall regulate procedures for preparation of plans and for declaring them to be binding.
- (9) The plans shall be prepared, for the first time, by 31 December 1999; thereafter, they are to be updated every five years.

Section Two

Authorisation of Waste Management Facilities

Article 30

Exploration of Suitable Sites

- (1) Owners of land, and parties entitled to use land, shall permit persons commissioned by the competent authority, or by the parties responsible for waste management within the meaning of Articles 15, 17 and 18, to enter premises, except for residences, and to carry out surveying, soil and groundwater studies or other similar work, in order to explore suitable sites for landfills and publicly accessible waste disposal facilities. Landowners and parties entitled to use land shall be notified in advance of any intentions to enter on to the relevant premises and to carry out such work.
- (2) The competent authority and the parties responsible for waste management within the meaning

of Articles 15, 17 and 18, after completing such work, must restore, without delay, the relevant premise to its condition prior to the relevant work. They are permitted to require, however, that equipment installed in connection with such exploration not be disturbed. Such equipment shall be removed when it is no longer needed for the exploration, or if a decision concerning the exploration has not been taken within two years after installation of the equipment and the land owner or party entitled to use the land has lodged an objection, with the competent authority, to its continued presence on the land.

- (3) Land owners, and parties entitled to use land, can require monetary compensation, from the competent authority, for losses of assets incurred through permissible measures pursuant to Para 2.

Article 31

Plan Approval and Planning Permission

- (1) The construction and operation of stationary waste disposal facilities for storage or treatment of waste for disposal, and significant changes in such facilities or their operation, require licensing pursuant to the provisions of the Federal Immission Control Act; further licensing pursuant to this Act is not required.
- (2) The construction and the operation of landfills, and significant changes in such facilities or their operation, require plan approval by the competent authority. As part of the plan approval procedure, an environmental impact assessment, pursuant to the provisions of the Act on the Assessment of Environmental Impacts, shall be carried out.
- (3) Article 74 Para 6 of the Administrative Procedures Act shall apply subject to the proviso that the competent authority may issue a planning permission, instead of a plan approval decision, upon application or ex officio, only if
1. construction and operation of an insignificant landfill are applied for, provided that such construction and operation is not likely to have any significant adverse effects on a good requiring protection referred to in Article 2 Para 1 Sentence 2 of the Act on the Assessment of Environmental Impacts or
 2. significant changes in a landfill or in its operation are applied for, to the extent that such changes can have no significant adverse effects on a good requiring protection as mentioned in Article 2 Para 1 Sentence 2 of the Act on the Assessment of Environmental Impacts, or

3. application is made for construction and operation of a landfill that, exclusively or predominantly, is used for development and testing of new operations, and the planning permission is to be issued for a maximum period of two years following the operational start-up of the facility; upon application, this period can be extended for up to one additional year.

Planning permission in accordance with Sentence 1 No. 1 cannot be issued for landfills for the storage of waste requiring special supervision; for such facilities, authorisation pursuant to Sentence 1 No. 3 may be issued for a maximum period of one year. Furthermore, planning permission pursuant to Sentence 1 No. 1 cannot be issued for landfills for storage of waste not requiring special supervision where such landfills have an acceptance capacity of ten tonnes or more per day or a total capacity of 25,000 tonnes or more; this shall not apply to landfills for inert waste. The competent authority should carry out a permission procedure if the changes will not have any significant adverse impacts on a good requiring protection as mentioned in Article 2 Para 1 Sentence 2 of the Environmental Impact Assessment Act and have the purpose of bringing about a significant improvement for such goods.

- (4) Article 15 Paras 1 and 2 of the Federal Immission Control Act shall apply mutatis mutandis. Sentence 1 shall also apply to the landfills mentioned in Article 35.
- (5) The party responsible for the project may apply for plan approval or planning permission for changes subject to notification pursuant to Para 4.

Article 32

Issuing, Security, Secondary Provisions

- (1) The plan approval decision pursuant to Article 31 Para 2, or a planning permission pursuant to Article 31 Para 3, may be issued only if
 1. it is ensured that the public interest is not impaired, in particular,
 - a) that dangers to natural resources requiring protection, as named in Article 10 Para 4, cannot arise and
 - b) that precautions are taken against impairment of natural resources requiring protection, especially through construction-related, operational or organisational measures in keeping with the state of the art,
 - c) that energy is to be used economically and efficiently,
 2. no facts are presented that justify reservations concerning the reliability of the persons responsible for the construction, management or supervision of the landfill's operation or

after-care phase,

3. these persons, and other relevant staff, possess the necessary relevant knowledge and expertise,
4. no adverse effects on the rights of another person are to be expected and
5. the conclusions of a waste management plan that have been declared legally binding do not conflict with the project.

(2) The adverse effects on the rights of another person, as described in Para 1 No. 3, do not conflict with the issuing of a plan approval or planning permission if they can be pre-vented, or compensated for, through restrictions or conditions, or when the affected party does not lodge objections to them. Para 1 No. 3 shall not apply if the project serves the public interest. If a plan approval is issued in this case, the affected party must be monetarily compensated for the resulting financial loss.

(3) The competent authority may require the owner of a landfill to provide security for recultivation, and for preventing or eliminating any impairment of the public interest after closure of the facility.

(4) The plan approval decision, and the planning permission pursuant to Para 1, may be made subject to certain conditions, linked with certain requirements and issued for limited terms, to the extent that this is required to protect the public interest. The competent authority shall review, both regularly and with special occasion, whether the plan approval decision and the permission pursuant to Para 1 are in keeping with the most recent level of the requirements specified in Para 1 Nos. 1 to 3 and 5. Addition, revision, or supplementation of conditions concerning requirements for the landfill, or its operation, is permitted even after the plan approval or planning permission has been issued. The Federal Government shall be authorised, after hearing the concerned parties (Article 60), to mandate, by means of statutory ordinance and with the consent of the *Bundesrat*, the time at which the competent authority is required to carry out reviews and issue the requirements specified in Sentence 3.

Article 33

Authorisation of Early Commencement

(1) In a plan approval or planning permission procedure, the authority competent for plan approval or issuing of the planning permission may give permission, subject to revocation and for a

period of six months, for construction of the project, including the measures necessary to review the landfill's operational suitability, to begin prior to plan approval or issuing of the planning permission, if

1. a decision in favour of the party responsible for the project can be expected,
2. such early commencement is in the public interest and
3. the party responsible for the project obligates himself to repair all damage caused by project execution, prior to the relevant decision, and, if the project does not receive plan approval or planning permission, to restore the relevant site to its former condition.

This period may, upon application, be extended by six months.

- (2) The competent authority shall require security if this is required to ensure that the party responsible for the project fulfils his obligations.

Article 34

Plan Approval Procedure and Further Administrative Procedures

- (1) Articles 72 through 78 of the Administrative Procedures Act (*Verwaltungsverfahrensgesetz*) shall apply to the plan approval procedure. The Federal Government is herewith authorised, through statutory ordinance and with the consent of the Bundesrat, to regulate further details of the plan approval procedure, especially the type and extent of the application documents, the details of the notification procedure pursuant to Article 31 Para 4 and the procedure for establishing closure pursuant to Article 36 Para 3 and for establishing completion of the after-care phase pursuant to Article 36 Para 5.
- (2) Objections within the framework of the authorisation procedure must be made in writing within the legally mandated period.

Article 35

Existing Waste Disposal Facilities

- (1) The competent authority may ordain term-limitations, conditions and requirements for the operation of landfills operated before 11 June 1972 or whose construction commenced before that date. It may prohibit the operation of such facilities, completely or in part, if a considerable impairment of the public interest cannot be prevented through restrictions, conditions or term-limitations.

- (2) Within the area named in Article 3 of the Unification Treaty, the competent authority may ordain term-limitations, conditions and requirements for the construction and operation of landfills operated before 1 July 1990 or whose construction commenced before that date. Para 1 Sentence 2 applies accordingly.

Article 36

Closure

- (1) The owner of a landfill for which closure is intended must notify the competent authority without delay of such intended closure. Such notification must be accompanied by documents concerning the type of landfill, its size and operating procedures, as well as intended recultivation and other measures to protect the public interest.
- (2) Where relevant arrangements are not contained in the plan approval decision pursuant to Article 31 Para 2, in the permission pursuant to Article 31 Para 3, in conditions and requirements pursuant to Article 35 or in the environmental-law provisions applying to the landfill, the competent authority shall require the landfill owner to
1. recultivate, at his own cost, the land used for a landfill pursuant to Para 1,
 2. take all other measures necessary, at his own cost, including monitoring and control measures during the after-care phase, in order to fulfil the requirements specified in Article 32 Paras 1 to 3, even after closure, and
 3. report to the competent authority all results of monitoring that provide indications of significant adverse environmental impacts.

If there is reason to suspect that a closed landfill pursuant to Para 1 is the source of any harmful changes in the soil or any other dangers to individuals or the general public, relevant identification, examination, assessment and rehabilitation shall be subject to the provisions of the Federal Soil Protection Act.

- (3) The competent authority shall establish the completion of closure (final closure).
- (4) The obligation pursuant to Para 1 shall also exist for owners of facilities in which waste requiring special supervision is produced.
- (5) The competent authority shall establish, upon application, the completion of the after-care phase.

Article 36a

Emissions Declaration

- (1) The operator of a landfill shall be obligated to provide information to the competent authority, within a period to be set by that authority or at a time defined in the statutory ordinance pursuant to Article 2, regarding the nature, amount and spatial and chronological distribution of emissions that have been emitted by the facility within a given period, as well as about the conditions under which such emissions have occurred (emissions declaration); he shall furthermore supplement, in keeping with the latest developments, the emissions declaration in keeping with the statutory ordinance pursuant to Para 2. This shall not apply to operators of landfills that emit only small amounts of emissions.

- (2) The Federal Government shall be authorised to define, by statutory ordinance and with the consent of the Bundesrat, the landfills for which obligations to submit emissions declarations shall apply, and to define the contents, length and form of such declarations, the times at which such declarations must be submitted and the procedures that must be complied with in emissions determination. Such statutory ordinance shall also specify what operators pursuant to Para 1 Sentence 2 shall be exempted from obligations to submit emissions declarations.

- (3) Article 27 Para 1 Sentence 2, Paras 2 and 3 of the Federal Immission Control Act shall apply *mutatis mutandis*.

- (4) The obligations to submit emissions declarations pursuant to Article 1 shall arise upon the entry into force of the statutory ordinance pursuant to Para 2.

Article 36b

Access to Information

Plan approval decisions pursuant to Article 31 Para 2, permissions pursuant to Article 31 Para 3, orders pursuant to Article 35, all rejections and changes of or to such decisions, and all results, submitted to the competent authority, of monitoring of landfill emissions shall be made available to the public, pursuant to the provisions of the Environmental Information Act of 8 July 1994 (Federal Law Gazette I p. 1490), last amended by Article 21 of the Act for implementation of the EIA-Amendment Directive, the IPPC Directive and other EC environmental protection directives of 27 July 2001 (Federal Law Gazette I p. 1950), with the exception of Article 10.

Article 36c
Statutory Ordinances on Requirements for Landfills

- (1) The Federal Government shall be authorised to mandate by statutory ordinance, after hearing the concerned parties and with the consent of the *Bundesrat*, that the construction, characteristics, operation, condition after closure and operator's own monitoring of landfills must be able to meet certain requirements for compliance with Article 32 Para 1, Articles 35 and 36 and for implementation of binding decisions of the European Communities relative to the purpose set forth in Article 1 and, in particular,
1. that relevant sites must meet certain requirements,
 2. that landfills must meet certain operational, organisational and technical requirements,
 3. that the waste stored in landfills must meet certain requirements,
 4. that the emissions emitted by landfills must not be permitted to exceed certain thresholds,
 5. that operators must carry out, or have carried out, certain types of measurements and monitoring during operation and the after-care phase,
 6. that operators must have experts carry out certain testing
 - a) during construction or, otherwise, prior to the landfill's commissioning,
 - b) after the landfill's commissioning or a change within the meaning of Article 31 Para 2 or 5,
 - c) at regular intervals, or
 - d) during or after closure,
 7. that operators may be permitted to
 - a) commission the landfill,
 - b) begin operations after a significant change has been made,
 - c) complete closure,only after the competent authority has carried out relevant acceptance,
 8. what measures must be taken in order to prevent accidents and to limit the effects of accidents,
 9. that operators must report to the competent authority without delay, during operation and in the after-care phase, all results of monitoring that provide indications of significant adverse environmental impacts and all accidents that could have such impacts, and to submit regular reports, to the competent authority, with results of the measurement and monitoring measures specified in the statutory ordinance.

Any possible shifting of adverse impacts from one good requiring protection to another shall be taken into account in specification of requirements; a high overall level of protection for the environment shall be ensured.

- (2) The statutory ordinance may specify the extent to which the requirements specified, pursuant to Para 1, to protect against impairments of the good requiring protection specified in Article 10 Para 4 have to be fulfilled, following the expiration of certain transition periods, where less stringent requirements have been established, as of the entry into force of the statutory ordinance, in a plan approval decision, a permission or a provision under Land (state) law. In particular, the nature, characteristics and amount of stored waste, the relevant site conditions, the type, amount and dangerousness of the emissions emitted by the landfills and the landfills' operational lifetimes and technical characteristics shall be taken into account in specification of the duration of transition periods and of the applicable requirements. Sentences 1 and 2 shall apply *mutatis mutandis* to the landfills specified in Article 35 Para 1 and 2.
- (3) The Federal Government shall be authorised to specify by statutory ordinance, after hearing the concerned parties and with the consent of the *Bundesrat*, what requirements shall apply to the reliability and expertise of the persons responsible for construction of the landfill, and for the management or supervision of its operation, and to the expertise of other staff, including ongoing further training of such persons, in order to fulfil Article 32 Para 1 Nos. 1 and 3, and to implement binding decisions of the European Communities.
- (4) The Federal Government shall be authorised to mandate by statutory ordinance, with the consent of the *Bundesrat*, that owners of certain landfills must provide security or other equivalent means of safeguard, and to issue provisions concerning the nature, extent and amount of the required security pursuant to Article 32 Para 3 or other equivalent means of safeguard and to specify for how long such security or other equivalent means of safeguard must be provided.
- (5) Article 7 Para 3 shall apply *mutatis mutandis* to the statutory ordinances pursuant to Paras 1 to 3.
- (6) Where the *Länder* have issued provisions, by 3 August 2001, regarding operators' own monitoring, such provisions shall continue to apply until the entry into force of a statutory ordinance pursuant to Para 1.

Article 36d
Costs for Storage of Waste

- (1) The costs, under private law, charged by the operator for storage of waste must cover all costs for construction and operation of the landfill, including the costs of security or other equivalent means of safeguard required from the operator and the estimated costs for closure and after-care for a period of at least 30 years. Where fulfilment of the aim of Sentence 1 is assured, via exemptions pursuant to Section 4 Article 3 of the Environmental Framework Act, relevant application of costs for closure and after-care, and of costs for security, shall be waived in calculation of charges.
- (2) The Länder shall ensure that the provisions of Article 10 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ EC NO. L 182 p. 1) (Landfills Directive) are implemented in their own tax laws.
- (3) The operators and parties responsible, under public law, for waste management, as mentioned in Paras 1 and 2, shall record the costs specified in Para 1 and shall provide the competent authority, within a period to be specified by the authority, with overviews of such costs and of collected charges, public levies and expenditures.
- (4) Paras 1 to 3 shall apply mutatis mutandis to coverage of costs of facilities that are subject to permitting within the meaning of the Federal Immission Control Act and that fall within the scope of application of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ EC NO. L 182 p. 1).

Part Five
Promotion of Sales

Article 37
Obligations of the Public Sector

- (1) The Federal Authorities, as well as public-law legal entities, special assets and other agencies under federal supervision, are obligated to contribute, through their behaviour, to the attainment of the aims of Article 1. In particular, they shall examine, in connection with the design of work procedures, procurement or use of materials and consumer durables, and in connection with construction projects and other types of contracts, and taking into account Articles 4 and 5: whether, and to what extent, products can be used that are particularly

durable, are easy to repair and are reusable or recoverable; as well as products that, in comparison to other products, result in less or less-polluting waste and products manufactured from waste for recovery.

- (2) The agencies named in Para 1 shall strive to ensure, within the framework of their resources, that private law companies in which they have interests fulfil obligations pursuant to Para 1.
- (3) Special requirements, resulting from legal provisions or reasons of environmental protection, for the use of products or materials, are not affected.

Part Six

Obligation to Provide Adequate Information

Article 38

Obligation to Provide Advice and Information Concerning Waste

- (1) Parties responsible for waste management within the meaning of Article 15, 17 and 18 are obligated, within the framework of tasks conferred on them, and through self-administration, to provide information and advice concerning possibilities for avoiding, recovering and disposing of waste. Self-administrative authorities in industry and business are also obligated to provide advising. The parties so obligated may commission third parties pursuant to Article 16 Para 1 to carry out this task.
- (2) Upon request, the competent authority shall provide information, concerning existing suitable waste disposal facilities, to parties obligated by this Act to carry out disposal.

Article 39

Informing the Public

The Länder shall inform the public concerning progress achieved in avoidance and recovery of waste and concerning ensured status of waste disposal. Such information shall contain, taking into account existing secrecy requirements, a summary and evaluation of waste management plans, a comparison to the previous such report and a prediction for the subsequent reporting period.

Part Seven Supervision

Article 40 General Supervision

- (1) Waste avoidance, in keeping with statutory ordinances issued on the basis of Articles 23 and 24, as well as recovery and disposal of waste, shall be subject to supervision by the competent authority.
- (2) The following parties shall provide information concerning operation, facilities, installations and other areas/objects subject to supervision to persons commissioned by the supervisory authority:
1. Producers or owners of waste,
 2. Parties obligated to carry out waste management,
 3. Operators of recovery and waste disposal facilities, even if the relevant facilities have been closed,
 4. Former operators of waste recovery and waste management facilities, even if the relevant facilities have been closed,
 5. Operators of wastewater facilities that also recover and dispose of waste,
 6. Operators of facilities within the meaning of the Federal Immission Control Act in which waste is also recovered and disposed of.

Parties obligated to provide information shall allow the persons commissioned by the competent authority, in order to check fulfilment of obligations pursuant to Articles 5 and 11, to enter premises, including offices and shops, to inspect documents and to conduct technical investigations and tests. The parties obligated to provide information are also required to permit entry, for these purposes, into the parties' homes, if this is required to avert imminent danger to public safety or order. The basic right to the inviolability of the home (Article 13 of the Basic Law) shall be restricted to that extent.

- (3) Operators of recovery and waste disposal facilities, or of facilities that also recover and dispose of waste, are required to make such facilities accessible, to provide the manpower, tools and documents necessary for supervision and, following the relevant order of the competent authority, to permit the condition and operation of the relevant facility to be inspected, at their own cost.

- (4) The party required to provide information may refuse to do so in respect of questions which, if answered, would expose him or one of the dependants mentioned in Article 383 Para 1 Nos. 1 through 3 of the Code of Civil Procedure to the risk of penal prosecution or of proceedings under the Administrative Offences Act (*Gesetz über Ordnungswidrigkeiten*).

Article 41

Waste Requiring Supervision

- (1) Special requirements, in keeping with this Act, are to be placed on the supervision and disposal of waste from commercial companies or other business enterprises or public institutions, that, due to its type, nature or amount, poses a particular risk to health, air quality or water quality, that is explosive or flammable or that contains or could foster pathogens of communicable diseases (waste for disposal that requires special supervision). The Federal Government shall determine, after hearing the parties concerned (Article 60), by statutory ordinance and with the consent of the Bundesrat, which waste for disposal requires special supervision.
- (2) All waste for disposal that does not fall under Para 1 requires supervision.
- (3) The Federal Government is herewith authorised, after hearing the parties concerned (Article 60), by statutory ordinance and with the consent of the Bundesrat, to determine that the following waste is waste for recovery:
1. waste for which recovery and supervision, on the basis of the substance characteristics mentioned in Para 1 and in keeping with this Act, must be made subject to special requirements (waste for recovery that requires special supervision),
 2. waste for which, as a result of its type, nature or amount, certain requirements are needed to ensure proper and safe recovery (waste for recovery that requires supervision).
- (4) The competent authority may, in individual cases, classify waste in a manner that differs from that of Paras 1 through 3, to the extent that this does not conflict with the interests mentioned there.

Article 42

Optional Proof Procedure Concerning Waste Disposal

- (1) The competent authority may mandate that owners of waste that is not disposed of together with household waste shall provide proof of the type and amount of this waste, and of its disposal, shall keep a record book, shall keep and store relevant records and shall submit such record books and records to the competent authority for inspection.
- (2) The proof pursuant to Para 1 may be required
 1. before the commencement of the planned disposal, and consisting of an owner's declaration, a declaration of acceptance by the party carrying out disposal and confirmation by the competent authority and
 2. after execution of the disposal; consisting of appropriate documentation of the whereabouts.

The competent authority is authorised, within the province of its duties, to take the decision concerning the type, extent and content of the required documentation.

- (3) Parties obligated pursuant to Article 40 Para 2 Sentence 1 shall, even if no order is made pursuant to Para 1, keep and store, for a period of five years, records intended for them and testifying their dealings with waste for disposal. They shall do this for the purpose of providing proof. This five-year period shall apply unless a statutory ordinance pursuant to Article 48 No. 4 sets forth a different period.

Article 43

Mandatory Proof Procedure Concerning the Disposal of Waste Requiring Special Supervision

- (1) Obligated parties named in Sentence 2 shall keep a record book and submit records, in keeping with Article 42 Paras 1 and 2, concerning the disposal of waste requiring special supervision, but not concerning the small amounts set forth by statutory ordinance pursuant to Article 48 No. 5. They shall do this even without special request from the competent authority. The parties so obligated include

1. the operator of a facility in which waste of this type occurs,
2. all persons who collect or transport waste of this type,
3. the operator of a waste disposal facility and
4. the operator of a wastewater facility, or of a facility within the meaning of the Federal Immission Control Act, in which waste of this type is also disposed of.

(2) Parties who fulfil the prerequisites mentioned in Para 1 No. 1 through 4 must notify the competent authority accordingly.

(3) The competent authority may exempt, upon application, a party obligated pursuant to Para 1 from keeping a record book, or from submitting records; such exemption, which is subject to revocation, may be either global or apply only to certain types of waste, and is possible to the extent that no impairment of the public interest is expected.

Article 44

Exceptions to the Mandatory Proof Procedure

(1) When waste producers or owners shall dispose of waste in facilities of their own that are tightly interconnected, both spatially and operationally, the proofs are replaced by waste management concepts and waste balance sheets. Proof pursuant to Article 43, or simplified proof pursuant to Article 42 Para 3, shall not be required. The competent authority's power, pursuant to Article 42 Para 1, to require proofs in individual cases, shall remain unaffected.

(2) If such own disposal is carried out in facilities that are not tightly interconnected, both spatially and operationally, the competent authority should not require submission of proof pursuant to Article 43, if compatibility with the public interest of such own disposal can be proven through waste management concepts and waste balance sheet. In this case, Para 1 Sentences 2 and 3 shall apply accordingly.

Article 45

Optional Proof Procedure for Waste Recovery

(1) The provisions set forth by Article 42 for waste recovery shall apply to the proof procedure for waste recovery.

- (2) Proof of recovery of waste not requiring special supervision should be ordained only if the public interest requires this. If the competent authority, pursuant to Para 1, in combination with Article 42, requests proof of recovery of waste requiring special supervision, this request shall be limited to the following:
1. notification concerning the type and amount of the produced waste and concerning the intended recovery or
 2. proof of recovery carried out or
 3. proof of the whereabouts of the relevant waste.
- (3) Obligated parties pursuant to Article 40 Para 2 Sentence 1, even without order pursuant to Para 1 in combination with Article 42 Para 1, shall retain and store records intended for them in connection with their dealings with waste requiring special supervision, for the purpose of proof.

Article 46

Mandatory Proof Procedure for the Recovery of Waste Requiring Special Supervision

- (1) Obligated parties named in Sentence 2 shall keep a record book and submit records, in keeping with Article 42 Paras 1 and 2, concerning the recovery of waste requiring special supervision, but not concerning the small amounts set forth pursuant to Article 48 No. 5. They shall do this even without special request from the competent authority. The parties so obligated include:
1. the operator of a facility in which waste for recovery requiring special supervision is produced,
 2. every person who collects or transports waste for recovery requiring special supervision,
 3. the operator of a facility in which waste requiring special supervision is recovered, and
 4. the operator of a facility, within the meaning of the Federal Immission Control Act, that also recovers waste requiring special supervision.
- (2) Parties who fulfil the prerequisites mentioned in Para 1 No. 1 through 4 must notify the competent authority accordingly.
- (3) The competent authority may exempt, upon application, a party obligated pursuant to Para 1 from keeping a record book, or from submitting records; such exemption, which is subject to revocation, may be either global or apply only to certain types of waste, and is possible

to the extent that no impairment of the public interest is expected.

Article 47

Exceptions to the Mandatory Proof Procedure

- (1) When waste producers or holders recover waste in facilities of their own that are tightly interconnected, both spatially and operationally, the proofs shall be replaced by waste management concepts and waste balance sheets. Proof pursuant to Article 46, or simplified proof pursuant to Article 45 Para 3, shall not be required. The competent authority's powers, pursuant to Article 45 Para 1, to require proofs in individual cases, shall remain unaffected.
- (2) If recovery is carried out in facilities other than those mentioned in Para 1, the competent authority should not require submission of proof pursuant to Article 46, if the compliance and safety of the recovery can be proven through waste management concepts and waste balance sheet. In this case, Para 1 Sentences 2 and 3 shall apply *mutatis mutandis*.

Article 48

Statutory Ordinances Concerning Proof of Recycling and Disposal

The Federal Government is herewith authorised, after hearing the parties concerned (Article 60), through statutory ordinance and with the consent of the Bundesrat, to determine

1. that the required proof and record books, and the retention and storage of records, must meet certain requirements,
2. that different requirements apply to the documents mentioned in No. 1, for certain waste types or groups,
3. that the competent authority, upon application, may determine the type, extent and content of the proof obligation to be different from the type, extent and content set forth in statutory ordinances pursuant to No. 1,
4. that the proofs, record books and records mentioned in No. 1 are to be stored for a certain period,
5. the small amounts for which, pursuant to Article 43 Para 1 or Article 46 Para 1, records need not be submitted; these amounts may vary, in accordance with the type and nature of the relevant waste,
6. which parties are subject to the obligation to provide notification, pursuant to Article 43 Para 2

and Article 46 Para 2, as well as the form and content of the relevant notification.

Article 49

Transport Licences

- (1) Waste for disposal may be commercially collected and transported only with a licence (transport licence) issued by the competent authority. This shall not apply
 1. to the parties responsible for waste management within the meaning of Arts 15, 17 and 18, and for the third parties commissioned by these parties,
 2. to the collection or transport of excavated earth, roadway rubble or construction rubble, to the extent that such materials do not contain pollutants,
 3. to the collection or transport of small amounts of waste, under the responsibility of commercial enterprises, except where the competent authority, upon application or ex officio, has exempted such enterprises from the licensing obligation pursuant to Sentence 1.

- (2) The licence shall be granted if no facts are known that justify reservations concerning the reliability of the applicant or of the persons responsible for managing and supervising of operations, and if the collector, transporter and third parties commissioned by them possess the necessary knowledge and expertise. The licence may be tied to restrictions, if this is necessary to protect the public interest. Issue of a transport licence does not exempt the licensee from the obligation of submitting required proofs on the basis of statutory ordinances pursuant to Articles 12, 24 and 48, prior to the commencement of collection or transport operations.

- (3) The Federal Government is herewith authorised, through statutory ordinance and with the consent of the *Bundesrat*, to issue provisions concerning the application materials as well as the form and content of the transport licence. Such statutory ordinance may also specify requirements pertaining to knowledge and expertise pursuant to Para 2 Sentence 1, may impose restrictions and may stipulate that the validity of the permission, in certain cases, shall depend on provision of the proof specified in Para 2 Sentence 3.

- (4) The licence shall be valid for the Federal Republic of Germany. The competent authority shall be the authority of the Land in which the transporter or collector has his main location.

- (5) Statutory ordinances issued, for safety reasons, in connection with the transport of hazardous

goods, shall not be affected.

- (6) If licences are required pursuant to Para 1, vehicles with which waste is transported on public roads shall be fitted with two rectangular, reflective, white warning panels with a baseline of at least 40 centimetres and a height of at least 30 centimetres; the warning panels must carry the inscription "A", written in black (letter height 20 centimetres, letter-stroke width 2 centimetres). During transport, the vehicle shall carry these warning panels both in front and in back; they shall be in a clearly visible position, perpendicular to the axle and not higher than 1.50 metres above the roadway. Tractor-trailers must carry the second panel at the rear of the trailer. The vehicle's driver is responsible for attaching the warning panels.

Article 50

Licence for Agency Transactions and for Other Cases

- (1) Parties who, without being in possession of waste, wish to provide commercial agency services, for third parties, for movement of waste, shall require a licence from the competent authority. The licence shall be issued, if no facts are known that would justify assuming the unreliability of the applicant or of a person charged with managing or supervising the relevant operations (or those of a branch office). The licence may be restricted in its content, and it may be tied to restrictions, to the extent that this is required to protect public or the environment; under the same prerequisites, subsequent inclusion, change or supplementation of restrictions is permissible. If the licensing authority is aware of facts that would indicate such changes, it is up to the applicant to refute them. The licence shall be revoked if facts that would indicate such revocation is required subsequently become known. Objections and actions for rescission have no suspensive effect.
- (2) The Federal Government is herewith authorised, after hearing the parties concerned (Article 60), by statutory ordinance and with the consent of the Bundesrat, to mandate that those persons
1. who collect or transport certain waste for recovery requiring special supervision, require, under appropriate application of Article 49 Para 1 through 5, a licence for such collection or transport,
 2. who put into circulation or recovers certain waste requiring supervision, or certain waste requiring special supervision, for which special requirements are needed with regard to safe recovery, in keeping with Articles 4 through 7, in order to protect the public interest,

require a licence for such actions or must prove their reliability or expertise in a procedure that remains to be specified more closely.

- (3) If a licence pursuant to Para 1 or 2 is not required, commissioned third parties within the meaning of Article 16 Para 1 shall notify the competent authority of their activity.

Article 51

Waiving of Licensing Requirements for Transport and for Agency Transactions

- (1) A specialised waste management company within the meaning of the Article 52 Para 1 shall not require a licence pursuant to Article 49 Para 1 and Article 50 Para 1, if it notifies the competent authority of its intentions to begin relevant operations, and if such notification includes proof of that the company is indeed a specialised waste management company.
- (2) The competent authority may set forth restrictions for execution of activities subject to notification, to the extent that this is required to ensure fulfilment of obligations pursuant to Articles 5 and 11. The competent authority shall prohibit execution of the activities subject to notification if facts become known that justify reservations concerning the reliability of the party obligated to carry out notification or of the persons responsible for managing and supervising relevant operations, or if compliance with the obligations mentioned in Articles 5 and 11 cannot be ensured by other means.

Article 52

Specialised Waste Management Companies; Waste Management Associations

- (1) Specialised waste management companies are those companies that are entitled to carry the seal of quality of a recognised waste management association pursuant to Para 3, or companies which have concluded a supervision contract, with a technical supervisory organisation, comprising at least a one-year inspection. Supervision contracts require the approval of the highest Land authority responsible for waste management, or of an authority appointed by it; such approval may also be issued in general form.
- (2) The Federal Government is herewith authorised, after hearing the parties concerned (Article 60), by statutory ordinance and with the consent of the Bundesrat, to mandate requirements

for companies specialising in waste management. Such requirements may include, in particular, minimum requirements for specialised knowledge, proof of personal reliability and of sufficient liability insurance and requirements concerning machines and equipment. The Federal Government is also authorised to provide for special recognition of companies specialising in waste management, and to regulate the procedures and prerequisites for such recognition, including its revocation, withdrawal and expiration, and for tests, for appointment and composition of testing bodies and for the relevant testing procedures.

- (3) Waste management associations must be recognised by the highest Land authority responsible for waste management, or by an authority it appoints. Such recognition may be revoked, especially for the purpose of countering threatening restrictions of competition. The activities of waste management associations are to be carried out in accordance with standardised guidelines issued by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, with the consent of the Bundesrat. Such guidelines may also set forth the prerequisites for recognition and its revocation, for the supervisory seal and for procedures for issuing and revoking this seal.

Part Eight

Company Organisation and Waste Management Officer

Article 53

Obligations to Provide Notification Concerning Company Organisation

- (1) If the representative organ of a joint-stock company consists of several members, or if a partnership company has several partners who are authorised to represent the company, then the competent authority shall be notified regarding which of these members or partners, pursuant to provisions concerning management authorisation, shall fulfil, on behalf of the company, the obligations of an operator of a facility requiring authorisation within the meaning of Article 4 of the Federal Immission Control Act, or of an owner within the meaning of Article 26, to which such an operator or owner is subject pursuant to this

Act and the statutory ordinances issued on the basis of this Act. The overall responsibility of all members of such an organ, or of all partners, shall remain unaffected.

- (2) The operator of a facility requiring authorisation within the meaning of Article 4 of the Federal Immission Control Act, the owner according to Article 26, or, within the framework of his management authorisation, the person to be named pursuant to Para 1 Sentence 1, shall inform the competent authority of the means by which it is ensured that provisions and orders issued to support avoidance, recovery and environmentally compatible disposal of waste are being complied with in operations.

Article 54

Appointment of a Company Waste Management Officer

- (1) Operators of facilities requiring authorisation within the meaning of Article 4 of the Federal Immission Control Act, operators of facilities, in which waste requiring special supervision is regularly produced, operators of stationary sorting, recovery or waste disposal facilities, and owners within the meaning of Article 26, shall appoint one or more Company Waste Officers (Waste Officers), to the extent this is necessary, with regard to the type or size of the relevant facilities, due to
1. the waste occurring, recovered or disposed of in the facilities,
 2. technical problems of avoidance, recovery or disposal or
 3. capability of products to cause problems, during or following proper use, with regard to proper and safe recovery or environmentally compatible disposal.

The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall determine, after hearing the parties concerned (Article 60), by statutory ordinance and with the consent of the Bundesrat, for which facilities pursuant to Sentence 1 the owners must appoint Waste Management Officers.

- (2) The competent authority may mandate that operators of facilities pursuant to Para 1 Sentence 1 for which appointment of a Waste Management Officer if not required by statutory ordinance, must appoint one or more Waste Management Officers, if, in individual cases, the necessity of such appointment results from the reasons mentioned in Para 1 Sentence 1.
- (3) If an Immissions Control Officer must be appointed, pursuant to Article 53 of the Federal Immission Control Act, or if a Water Protection Officer must be appointed, pursuant to

Article 21a of the Federal Water Act, then these parties may also fulfil the duties and carry out the tasks of a Waste Management Officer pursuant to this Act.

Article 55

Tasks

- (1) The Waste Management Officer shall advise the operators and the company's personnel in questions that could be of significance with regard to closed substance cycle waste management and to waste disposal. He is authorised and obligated
1. to supervise the different stages of waste treatment, from its occurrence or delivery to its recovery or disposal,
 2. to supervise compliance with the provisions of this Act and the statutory ordinances issued on the basis of this Act, as well as fulfilment of existing conditions and restrictions, especially by controlling, at regular intervals, the company facilities and the type and nature of the waste which occurs in the facilities or which is recovered or disposed of in these, to provide information regarding detected insufficiencies and to make proposals for measures for eliminating these insufficiencies,
 3. to inform company personnel concerning impairment of the public interest that could result from the waste which occurs in the facilities or which is recovered or disposed of in these, as well as concerning facilities and measures for preventing such impact, taking into account the laws and statutory ordinances applying to the avoidance, recovery and disposal of waste,
 4. to carry out the following with regard to facilities requiring authorisation within the meaning of Article 4 of the Federal Immission Control Act or facilities in which waste requiring special supervision regularly occurs: to encourage the development and introduction of
 - a) environmentally compatible, low-waste-producing processes, including processes for the avoidance, proper and safe recovery or environmentally compatible disposal of waste,
 - b) environmentally compatible, low-waste-producing products, including processes for re-use, recovery and environmentally compatible disposal upon completion of use of these products, and
 - c) to co-operate in the development and introduction of processes mentioned under letters a and b, especially by studying the relevant processes and products using criteria of closed substance cycle waste management and of disposal,
 5. to encourage improvements of relevant processes in facilities in which waste is recovered

or disposed of.

- (2) The Waste Management Officer shall submit an annual report to the operator concerning the measures taken and planned pursuant to Para 1 Nos. 1 through 5.
- (3) Articles 55 through 58 of the Federal Immission Control Act apply to the relationship between the Waste Management Officer and the party obligated to appoint a Waste Management Officer.

Article 55a

Facilitated Procedures for Audited Company Sites

The Federal Government shall be authorised, in order to promote private responsibility, to issue statutory ordinances, with the consent of the *Bundesrat*, mandating facilitated procedures, for companies listed in a register pursuant to Article 6 in conjunction with Article 7 Para 2 Sentence 1 of Regulation (EC) No 761/2001 of the European parliament and of the council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (OJ EC NO. L 114 p. 1), with regard to the content of application materials in permit procedures, and providing for facilitated procedures under monitoring law, where the relevant provisions of Regulation (EC) No 761/2001 are equivalent to the requirements planned relative to monitoring and to the application materials pursuant to this Act or the statutory ordinances issued on the basis of this Act, or where such equivalence is ensured by the statutory ordinance pursuant to this provision. In the process, additional requirements pertaining to the use and withdrawal of facilitated procedures, or to the complete or partial suspension of facilitated procedures, when the prerequisites for their being granted are no longer fulfilled, may also be specified. Facilitated procedures under regulatory law may be permitted if the environmental auditor has reviewed compliance with the environmental provisions, has not found any discrepancies and has certified compliance in the declaration of validity. In particular, facilitated procedures may be permitted with regard to

1. calibrations, determinations, tests and measurements,
2. measurement reports and other reports and notifications of results of review,
3. the tasks of the waste management officer,
4. the operating organisation's obligations to provide notification, and
5. the frequency of the authority's monitoring.

Part Nine

Final Provisions

Article 56

Secrecy and Data Protection

Statutory ordinances concerning secrecy and data protection shall not be affected.

Article 57

Transposition of Legislation of the European Communities

In order to transpose laws of the European Communities, the Federal Government may issue statutory ordinances, for the purpose mentioned in Article 1, and with the consent of the Bundesrat, for ensuring proper and safe recovery and environmentally compatible disposal. Such statutory ordinances may also regulate the means by which the public is to be informed

Article 58

Enforcement within the Sphere of the Bundeswehr (Federal Armed Forces)

- (1) In the sphere of the Federal Ministry of Defence, responsibility for enforcement of this Act, and of statutory ordinances based on it for recovery and disposal of militarily owned waste, shall rest with the Federal Minister of Defence and the bodies designated by him.
- (2) The Federal Ministry of Defence is herewith authorised, for the purposes of recovery or disposal of waste, within the meaning of Para 1, from the sphere of the Bundeswehr, to permit exceptions to this Act and to the statutory ordinances based on it, to the extent that compelling reasons of defence or the fulfilment of intergovernmental obligations so require.

Article 59

Participation of the Bundestag in the issuing of statutory ordinances

Statutory ordinances pursuant to Article 6 Para 1, Article 7 Para 1 Nos. 1 and 4 and Articles 23, 24 and 57 of this Act are to be submitted to the Bundestag. Such submission shall take place prior to submission to the Bundesrat. Such statutory ordinances may be amended or rejected by resolution

of the Bundestag. Resolutions of the Bundestag shall be submitted to the Federal Government. If the Bundestag, after the completion of three session weeks following arrival of a statutory ordinance, has not dealt with it, the statutory ordinance is forwarded unchanged to the Bundesrat.

Article 60

Hearing of Parties Concerned

As far as the authorisations for issuing statutory ordinances and general administrative provisions prescribe hearing of the parties concerned, representatives should be selected, and heard, from science, stakeholders, involved commercial and industrial sectors, the highest authorities responsible for waste management, the communities and associations of local government.

Article 61

Provisions Concerning Fines

- (1) An administrative offence shall be deemed to have been committed by anyone who wilfully or negligently
1. treats, stores or landfills waste, which he does not recover, outside of a facility pursuant to Article 27 Para 1 Sentence 1,
 2. contravenes Article 27 Para 1 Sentence 1 by treating, storing or landfilling waste for disposal outside of an appropriately licensed waste disposal facility,
 - 2a. constructs, or substantially modifies, a landfill without a plan approval decision pursuant to Article 31 Para 2 Sentence 1 or a planning permission pursuant to Article 31 Para 3 Sentence 1,
 - 2b. contravenes an enforceable requirement pursuant to Article 32 Para 4 Sentence 1 or 3 or Article 35 Para 1 Sentence 1 or Para 2 Sentence 1,
 - 2c. contravenes an enforceable requirement tied to a permission pursuant to Article 33 Para 1 Sentence 1,
 3. without a licence pursuant to Article 49 Para 1 Sentence 1, collects or transports waste for disposal, or contravenes an enforceable requirement pursuant to Article 49 Para 2 Sentence 2,
 4. serves as an agent for movements of waste, without a licence pursuant to Article 50 Para 1,
 5. contravenes a statutory ordinance pursuant to Article 6 Para 1, Article 7, Article 7 Para 3 also in conjunction with Article 36c Para 5, Article 8, Article 12 Para 1, Article 23, Article 24,

Article 27 Para 3 Sentences 1 and 2, Article 36c Para 1 Sentence 1 Nos. 1 to 5, 7, 8 or 9, Article 49 Para 3 or Article 50 Para 2, or an enforceable ordinance based on such a statutory ordinance, as far as the statutory ordinance refers to this penalty provision in respect of certain constituent facts.

- (2) An administrative offence shall be deemed to have been committed by anyone who wilfully or negligently
1. contravenes Article 25 Para 2 Sentence 1, Article 43 Para 2 or Article 46 Para 2 by failing to make proper notification,
 2. contravenes Article 30 Para 1 Sentence 1 by not allowing access to premises or by not allowing the carrying out of measurements or of soil and groundwater studies,
 - 2a. contravenes Article 36 Para 1 Sentence 1 by failing to provide notification, failing to provide correct notification, or failing to provide notification on time,
 - 2b. contravenes Article 36 Para 1 Sentence 1 in conjunction with a statutory ordinance pursuant to Para 2 Sentence 1, by failing to provide an emissions declaration, failing to provide a correct emissions declaration, failing to provide a complete emissions declaration or failing to provide an emissions declaration on time, or by failing to supplement such a declaration, failing to supplement it correctly, failing to supplement it completely or failing to supplement it on time,
 3. contravenes Article 40 Para 2 Sentence 1 by failing to provide information, failing to provide complete information, or failing to provide correct information,
 4. contravenes Article 40 Para 2 Sentence 2 or 3 by failing to allow access to property or to residential, business or company premises, by failing to allow inspection of records or by failing to permit the carrying out of technical studies or tests,
 5. contravenes Article 40 Para 3 by failing to provide workers, tools or records,
 6. contravenes an enforceable order pursuant to Article 40 Para 3, Article 42 Para 1, also in combination with Article 45 Para 1, or to Article 54 Para 2,
 7. contravenes Article 43 Para 1 Sentence 1 or Article 46 Para 1 Sentence 1 by failing to keep a record book or to submit records,
 8. contravenes Article 49 Para 6 by failing to attach a warning panel, or by failing to attach it in the prescribed manner,
 9. contravenes Article 54 Para 1 Sentence 1, in combination with a statutory ordinance pursuant to Sentence 2, by failing to appoint a Waste Management Officer or
 10. contravenes a statutory ordinance pursuant to Article 36c Para 1 Sentence 1 No. 6 or Article 48, or an enforceable ordinance based on such a statutory ordinance, as far as the statutory ordinance refers to this provision on administrative fines in respect of certain constituent facts.

- (3) Administrative offences pursuant to Para 1 may be punished by a fine of up to € 50,000; administrative offences pursuant to Para 2 may be punished by a fine of up to € 10,000.
- (4) The administrative authority within the meaning of Article 36 Para 1 No. 1 of the Administrative Offences Act shall be the Federal Office for Goods Transport, in so far as administrative offences pursuant to paragraph 1 Nos. 3 and 5 or paragraph 2 Nos. 1, 6, 7, 8 and 10 are concerned and the breach of these provisions is committed in connection with the transport of waste with heavy goods vehicles by a company which has its registered seat abroad.

Article 62

Confiscation

Where an administrative offence pursuant to Article 61 Para 1 Nos. 2, 2a, 2b, 2c, 3, 4 or 5 has been committed, objects may be confiscated,

1. to which the administrative offence relates or
2. which have been used or intended for committing or preparing the administrative offence.

Article 23 of the Administrative Offences Act shall be applicable.

Article 63

Competent Authorities

The Land Governments or those bodies designated by them shall determine the authorities competent for the application of this Act, unless such competence is assigned by Land law.

Article 64

Interim Provisions

Articles 5a and 5b of the Waste Avoidance and Waste Management Act shall remain in force until they have been supplanted by appropriate statutory ordinances pursuant to Articles 7 and 24 of this Act.

Annex I
Categories of Waste

- Q1 Production or consumption residues not otherwise specified below
- Q2 Off-specification products
- Q3 Products whose date for appropriate use has expired
- Q4 Materials spilled, lost or having undergone other mishap, including any materials, equipment, etc. contaminated as a result of the mishap
- Q5 Materials contaminated or soiled as a result of planned actions (e.g. residues from cleaning operations, packing materials, containers, etc.)
- Q6 Unusable parts (e.g. reject batteries, exhausted catalysts, etc.)
- Q7 Substances which no longer perform satisfactorily (e.g. contaminated acids, contaminated solvents, exhausted tempering salts, etc.)
- Q8 Residues of industrial processes (e.g. slags, still bottoms, etc.)
- Q9 Residues from pollution abatement processes (e.g. scrubber sludges, baghouse dusts, spent filter, etc.)
- Q10 Machining/finishing residues (e.g. lathe turnings, mill scales, etc.)
- Q11 Residues from raw materials extraction and processing (e.g. mining residues, oil field slops, etc.)
- Q12 Adulterated materials (e.g. oil contaminated with PCB, etc.)
- Q13 Any materials, substances or products whose use has been banned by law
- Q14 Products for which the holder has no further use (e.g. agricultural, household, office, commercial and shop discards, etc.)
- Q15 Contaminated materials, substances or products resulting from remedial action with respect

to land

Q16 Any materials, substances or products which are not contained in the above categories.

Annex II A

Disposal Operations

This Annex lists disposal operations that are used in practice. Pursuant to Article 4 of Council Directive 75/442/EEC of 25 July 1975 on waste (OJ EC No. L 194 p. 39), amended by Directive 91/156/EEC (OJ EC No. L 78 p. 32), as last amended by Directive 91/692/EEC (OJ EC No. L 377 p. 48), waste must be disposed of without endangering human health and without the use of processes or methods likely to harm the environment.

- D1 Tipping above or underground (e.g. landfill, etc.)
- D2 Land treatment (e.g. biodegradation of liquid or sludge discards in soils, etc.)
- D3 Deep injection (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.)
- D4 Surface impoundment (e.g. placement of liquid or sludge discards into pits, ponds or lagoons, etc.)
- D5 Specially engineered landfill (e.g. placement into lined discrete cells which are capped and isolated from one another and the environment, etc.)
- D6 Release of solid waste into a water body except seas/oceans
- D7 Release into seas/oceans including seabed insertion
- D8 Biological treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are disposed of by means of any of the operations numbered D 1 to D 12
- D9 Physico-chemical treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations numbered D 1 to D 12 (e.g. evaporation, drying, calcination, etc.)
- D10 Incineration on land
- D11 Incineration at sea
- D12 Permanent storage (e.g. emplacement of containers in a mine, etc.)

- D13 Blending or mixture prior to submission to any of the operations numbered D 1 to D 12
- D14 Repackaging prior to submission to any of the operations numbered D 1 to D 13
- D15 Storage pending any of the operations numbered D 1 to D 14 (excluding temporary storage, pending collection, on the site where it is produced).

Annex II B

Recovery Operations

This Annex lists recovery operations that are used in practice. Pursuant to Article 4 of Council Directive 75/442/EEC of 25 July 1975 on waste (OJ EC No. L 194 p. 39), amended by Directive 91/156/EEC (OJ EC No. L 78 p. 32), as last amended by Directive 91/692/EEC (OJ EC No. L 377 p. 48), adapted by Commission Decision 96/350/EC of 24 May 1996 (OJ EC No. L 135 p. 32), waste must be recovered without endangering human health and without the use of processes or methods likely to harm the environment.

- R1 Use principally as a fuel or other means to generate energy

- R2 Solvent reclamation/regeneration

- R3 Recycling/reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes)

- R4 Recycling/reclamation of metals and metal compounds

- R5 Recycling/reclamation of other inorganic materials

- R6 Regeneration of acids or bases

- R7 Recovery of components used for pollution abatement

- R8 Recovery of components from catalysts

- R9 Oil re-finishing or other re-uses of oil

- R10 Spreading on land resulting in benefit to agriculture or ecological improvement

- R11 Use of wastes obtained from any of the operations numbered R 1 R 10

- R12 Exchange of waste for submission to any of the operations numbered R 1 to R 11

- R13 Storage of materials intended for submission to any of the operations numbered R 1 to R 12 (excluding temporary storage, pending collection, on the site where they are produced).

Annex III

Criteria for Determining the State of the Art

In determination of the state of the art, the following criteria, in particular, are to be taken into account, also taking into account the proportionality between the costs and benefits of possible measures and the principle of precaution and prevention, and, in each case, with regard to facilities of a specific type:

1. Use of low-waste technology,
2. Use of less hazardous substances,
3. Promotion of recovery and recycling of the substances generated and used in the various processes and, possibly, of the relevant waste,
4. Comparable procedures, equipment and operational methods that have been successfully tested in operation,
5. Progress in technology and in relevant scientific findings,
6. The nature, impacts and amounts of the relevant emissions,
7. The time at which the new or existing facilities go/went into operation,
8. The time required to introduce a better available technology,
9. Consumption of raw materials and the type of raw materials used in the various processes (including water) and energy efficiency,
10. The need to avoid or reduce, as far as possible, the total effects of emissions and hazards for human beings and the environment,
11. The need to prevent accidents and to reduce their impacts on human beings and the environment,
12. Information published by the Commission of the European Communities pursuant to Article 16 (2) of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ EC NO. L 257 p. 26) or by international organisations.